LOS ANGELES
BAR BULLETIN

In This Issue

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Not shown: Albert Lee Stephens, Jr., and Winthrop Johnson, Trustee from Pomona Valley Bar Association.

Los Angeles
BAR BULLETIN

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VOL. 34 SEPTEMBER, 1959 No. 11

The President's Page

By HUGH W. DARLING

LUMBERING LEGALESE

HUGH W. DARLING

The law in its wisdom demands clarity in the composition of legal manuscripts by imposing penalties on obscurity. CCP 426 requires that a complaint contain a statement of the facts "in ordinary and concise language." Demurrers lie for ambiguity. An uncertainty in a contract is resolved against the errant author. Still, the legal profession is infamous for its literary murk.

Thumbing through any Statute or set of Administrative Rules and Regulations, written by lawyers whether or not we like to admit it, cannot fail to turn up bleak examples. Too many contracts, leases and wills reflect the average lawyer's flight into the befuddling realm of legalese—documents which, above all other types, should be clear, simple, and not open to honest misunderstanding.

The scrivener of any script, whether a contract, a thesis or a love letter, should be content—not when his meaning can be understood—but only when his meaning cannot be misunderstood. This is not accomplished by quick and unstudied writing. It comes from pensive attention and hard work, but the results are worth the effort. In no field is clear documentation more important than in law where a single inept word can, and often does, spawn costly, protracted and needless litigation.

In Los Angeles County over 50% of the civil litigation is based on a dispute over written words. If all legal lucubrations (an example of the type of words to avoid) were couched in lucid language and in a fashion which no reasonable person could misinterpret, this percentage would be slashed. In turn, the backlog of untried cases would enjoy a corresponding cut.

Take "and/or" for instance. Professor William Strunk, Jr., in his little gem "The Elements of Style" has this to say about that phrase born of unwed parents:

> "A device borrowed from legal writing. It destroys the flow and goodness of a sentence. Useful only to those who need to write diagramatically or enjoy writing in riddles."

Although few contracts make lively reading, there is no reason why lawyers should shun coherent and pleasing phraseology when drafting legal copy. Sir Walter Scott may have had this in mind a century and a half ago when he wrote,

> "A lawyer without history and literature is a mechanic, a mere working mason; if he possesses some knowledge of these, he may venture to call himself an architect."

While an engaging literary style may not be too important in contracts and wills and other potentially litigious papers so long as the language is distinct, composition is of vital importance in a brief. The purpose of a brief is to sell the reader, a judge or at least a judge's clerk, on the position of the author's client, either that the court below was right or wrong. They are read only because they have to be read. Since the subject of a brief is anything but hair-raising, composing it in an intelligible and readable manner is indispensable. Unless clarity enables the judge to grasp the meaning at the first reading, and unless its craftsmanship keeps his mind from wandering, the brief is not likely to sustain the advocate's point. Though sad, it is true that an explicit, vivid brief urging a weak position often prevails over a strong position presented by a clumsy, soporific (another example) brief.

Most of us would profit by occasionally dusting off our college text book on composition.

The Public Image of the Lawyer: A Private Poll

By ROBERT V. WILLS*

INTRODUCTION

Attorneys as a group are particularly immersed in the arts of expression and persuasion. Representation of the client at the bar requires a gift for and training in better-than-average communication. Successful advocacy necessarily entails exposition of ideas with maximum effectiveness and appeal. With all of this training and background in effective communication (and normally a fine linguistic IQ and a proclivity toward articulation behind him) one would certainly expect the attorney to have won a fine place for himself in the court of public opinion. Pulse-takers and commentators on the subject agree practically unanimously that he has not.[1] There is every indication that the public at large still regards the lawyer with a combination of awe, suspicion, skepticism, and mistrust. As public servant and as personal counsellor or advocate, the attorney is still turned to as a necessary evil, or at best as part of a relationship more apprehensive than heart-warming.

For external verification of this lack of public enthusiasm, we need only turn to the evaluation of lawyers in classical literature. There will be no lawyers in "Utopia" as conceived by Thomas More in 1516. Shakespeare, in Henry VI, allowed one of his characters to mouth the harsh notion of killing all lawyers. Even such a delightful romanticist as Keats classed us unaesthetically as "monsters." You will recall the incredulous individual who, noting the epitaph "Here lies a gentleman and a lawyer", exclaimed, "What? Two men in the same grave?".

It is questionable whether the modern mass media have mollified this harsh image to any appreciable extent, despite the inception of a gentle, constructive program of liaison with the press and TV-movie industries.[2] It will take time and some doing to erase the

*Mr. Wills obtained his LL.B. from the School of Law of UCLA in 1953. He practices in Long Beach as house counsel for a group of corporations.

[1] *Public Relations and the Bar: The Program of the American Bar Assn.* by Richard P. Tinkham, A.B.A. Jrl. Vol. 42, p. 133 (Feb. 1956); *What Do Laymen Think of Lawyers? Polls Show the Need for Better Public Relations,* by Albert P. Blaustein, A.B.A. Jrl. Vol. 38, p. 39 (Jan. 1952); *Public Relations Programs of the Bar: An Analysis of the Problem and the Solution,* by George Maurice Morris, A.B.A. Jrl. Vol. 38, p. 115 (Feb. 1952); *The Public View of the Legal Profession,* by David F. Maxwell, A.B.A. Jrl. Vol. 43, p. 785 (Sept. 1957).; *The Duties of the Profession: What the Organized Bar Owes to the Public,* by Jack Pope, A.B.A. Jrl. Vol. 43, p. 801 (Sept. 1957).

[2] *Summary of Activities,* American Bar Association, 1957 (Public Relations Committee).

stereotype of the lawyer as the cunning, shrewd strategist whose function it is to find loopholes in the sometimes clumsy attempts of society to regulate the conduct of its citizens, and by the exercise of his wits to extricate his unsavory or errant client from a horrible plight,[2] or gain for him an unconscionable sum of money.[4] Twenty years ago it was the "mouthpiece" for the gangsters who got the copy and the screen time. More recently it was counsel for the communists. Currently it is attorneys for union chieftains under public fire who are frustrating the public's desire for a just and speedy trial, followed by early sentencing. Stereotypes developed over centuries do not dispel quickly.

Perhaps one good reason for the development and persistence of the unfavorable picture of the Bar lies in the fact that attorneys have always reminded *each other* of their vital role in the maintenance of a free society and in the redress of public and private grievances, but have not bothered to tell the public. The literary bench is constantly revealing the scope and sweep of the law in decisions which cut across every vital segment of public and private life. No law student or practicing attorney who reads the law can fail to grasp the breadth and vitality, the challenge and potential, of the attorney's role in a democracy as a framer of standards, private counsellor, public servant, and defender of the faith. There is scarcely a convention or other large gathering of attorneys without reference to the noble past, purposes, and potentialities of the Bar in preserving a free society and improving the administration of justice, (including, currently, between the various nations and, forsooth, among the celestial bodies).

Few members of the general public, however, are exposed to our learned decisions and professional literature or participate in discussions of our sacred canons and purposes. Few attorneys have had the time or the pedagogical inclination to brief their clients on the large view of what they were doing. The client and the public have therefore turned to the molders of public opinion for their concept of our role. Such sources, either for reasons of ignorance or commercial expediency, have always tended to create a stereotype.[5] Stereotypes necessarily entail over-simplification, and, unfortunately the image of the Bar acquired an aura of unsavory and selfish

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[2]*How Ethical Are These Lawyers,* by John Barker Waite, November 1957 Reader's Digest, p. 56.

[4]*How An Ambulance Chaser Works,* Saturday Evening Post, March 23, 1957.

[5]*Public Opinion,* by Walter Lippmann (1922).

cunning. The most effective countervailing influence, historically, was personal acquaintance with an attorney or judge, or a professional relationship with one. Alas, the effectiveness of personal contact is limited by the fact that attorneys are in all respects human, despite many a harsh pronouncement to the contrary, and therefore not uniformly good ambassadors. The experience of a professional relationship, is often dimmed by the fact that the average person who has weathered an adversary proceeding has a tendency to think that, depending on the outcome, one or the other lawyer is a shyster or an incompetent, and neither a philosopher-statesman.

As house counsel for a family of corporations, the author is exposed to the attitudes of executives toward the legal profession and deals with outside counsel in the dual capacity of attorney and client. Prompted by his experiences and some background and interest in psychometrics and sampling, the author decided to sample the public attitude toward the Bar in Los Angeles and Orange Counties.

FRAMEWORK OF THE POLL

Eighteen questions were composed which reflected what the writer considered subjectively to be areas of maximum misconception, misunderstanding or complaint. Framing of questions which called for spectrum responses ("usually," "often," "occasionally," "rarely or never") was avoided for the reason that this would tend to produce too many cautious ("occasionally") answers and thereby fail to develop a basic emotional response. Instead, the answers called for were "Yes," "No," and "No Opinion." The form adopted was not intentionally leading or loaded and was tried for comprehensibility on a few business associates (admittedly not a random or representative group).

Questionnaires were sent out to six hundred individuals who were chosen, at random, one hundred each, from the five telephone directories for Los Angeles County and the one for Orange County. The number of white pages in each directory was divided by one hundred to set the page interval for the book. A name was taken from a given area of each interval page. Attorneys and CPAs were eliminated, as were business addresses. There were no other factors of elimination. The sampling is believed to be as random as a telephone listing sampling can be in a given area. None of the polled individuals were known to the author as far as he can tell. Responses were received from 102 individuals. Return postmarks originated in all six telephone areas. The validity of the poll is, of

course, limited by the small size of the sample, the relatively restricted geographical area and the elimination of that segment of the population which cannot afford or does not desire a telephone (or has unlisted numbers). Nevertheless it is felt that the results have some value and provide useful information.

THE RESULTS

Limited polls conducted in Iowa, California, Texas and Michigan some years ago all produced results which were not flattering to the Bar.[6] Likewise responses to questions posed by Messrs. Gallup and Roper back in 1949 and 1950 indicated that the legal profession was not overly popular with the general public as a recommended pursuit or even as a source for government leaders.[7] Notwithstanding the passage of time and growing public relations efforts by the organized Bar, the Los Angeles and Orange County poll also reflects, as the whole, an unfavorable image of the legal profession.

Analysis of the responses shows significant majorities holding such unfavorable views as that lawyers distort the truth and produce false evidence in criminal cases, generally charge too much, and are more interested in the fee than in the client's welfare. One half of those who had an opinion, felt that such epithets as "shyster," "ambulance chaser" or "mouthpiece" are often properly applied to lawyers. On the other hand, most respondents agreed that lawyers play an important role in our society, that their work helps to maintain a free society and good government and that lawyers

[6] *Public Relations and the Bar: The Program of the American Bar Assn.*, supra.
[7] *What Do Laymen Think of Lawyers? Polls Show the Need for Better Public Relations*, supra.

are neither too hidebound or inflexible in their thinking nor superficial in their preparation. The results in detail are as follows:

1. Do you feel that lawyers play an important role in our society?

   Yes: 97 No: 3 No opinion: 2

There would seem to be practically unanimity of opinion that the Bar has an impact on society, for good or bad ("important" probably connoting "good").

2. Do you feel that the work done by lawyers is of more benefit to society than that performed

by doctors?	Yes: 0	No: 98	No opinion: 4
by teachers?	Yes: 3	No: 94	No opinion: 5
by engineers?	Yes: 17	No: 82	No opinion: 5

A couple of individuals could not accept the proposition that one field of endeavor may be said to have more social benefit than others, and so noted. The remainder obviously favor the medical, teaching, and engineering fields over the legal in terms of social uplift, though there is a slight breaking away when it comes to engineering. One may well question whether many of those responding would not actually lend more social prestige to the Bar but rank those professions higher which they do not regard with as much fear, awe, or mistrust as they do the Bar.

3. Do you believe that the average lawyer is more interested in winning his case than in getting at the truth or the good of society?

   Yes: 70 No: 21 No opinion: 11

This question obviously implies that there can be a difference between legal success and the prevailing of justice or truth.[8] It seems, any lawyer who searches his heart and his experience carefully will admit to such a possibility, and feel that the one individual who challenged the question because "winning the case is establishing the truth" is guilty of commendable idealism. Further, if the question is leading, it is submitted that was necessary to dig out the basic emotional attitude toward advocacy. At any rate, the response was 3½ to 1 against the idealistic position, (and against the stated position of the Bar as officers of the Court).

(Continued on page 342)

[8]Recall the anecdote of the fresh young attorney who won his first case and wired his father, also an attorney, "Justice prevailed. JOHN." The father immediately wired back: "Too bad. Appeal at once. DAD."

BOARD ACTIONS

By WALTER ELY, Secretary

This is the second in a series of columns designed to keep the membership informed about the actions taken by, and matters pending before the Board of Trustees. At recent meetings, the Board of Trustees:

Approved a recommendation presented by Mr. W. I. Gilbert, Jr., of the Judiciary Committee recommending that the President of the Association be granted the power in an emergency to make statements to the press, especially concerning matters having public relations implications concerning the Judiciary, with the understanding that Mr. Gilbert's subcommittee should inform the President of the Committee when it is felt that such statements should be made.

Reaffirmed its support of maintaining Canon 35 of the American Bar Association Canon's of Judicial Ethics, and directed the President to forward telegrams to appropriate American Bar Association committees and individuals indicating the Los Angeles Bar Association's stand in this matter.

Authorized the Los Angeles Bar Association's History Book Committee to negotiate for the printing of 5000 copies of the History of the Los Angeles Bar with a contemplated retail price of $7.50.

Referred to the Federal Courts Criminal Indigent Defense Committee, a letter from the District Director of Immigration and Naturalization Service, requesting assistance for representation of indigent aliens in deportation hearings.

Forwarded a copy of the special report from the special committee of Lawyers on Radio and Television to the President of the American Bar Association, to the Standing Committee on Professional Ethics and to the American Bar Association Committee making the nomination for the Gavel Award; and directed the Association's Public Relations Counselor, Mr. Robert C. Davidson, to furnish the Board with his opinion as to the public relations implications of the report.

. . . **Directed** the Bulletin Committee to publish in the next issue of the Bulletin a list of currently pending membership applications.

Requested the Committee on Criminal Law and Procedure to consider the formation of a subcommittee which would concern itself with matters dealing with Traffic Court and to coordinate with the American Bar Association Standing Committee on Traffic Court programs.

Approved the report dated June 29, 1959 from the Committee on Probate Law and Procedure which recom-

mended that the Board of Trustees of the Los Angeles Bar Association request the Board of Governors of the State Bar of California to restore to the agenda of the State Bar Committee on the Administration of Justice the proposed amendments to Probate Code Sections 781 and 785 which had been adopted by the 1958 Conference of State Bar Delegates.

Accepted with commendations the report dated June 9, 1959 from the Committee on Conformity Between Rules of the Superior Court and the Municipal Court and requested the Chairman of the Committee to invite to a joint meeting with his committee the Rules Committee of the Superior Court and the Rules Committee of the Municipal Court to ascertain what might be done to accomplish the proposed uniformity.

Approved a report from the Committee on Taxation re problems incident to the application of Internal Revenue Code Section 6672, and requested the Committee on Taxation to draft an appropriate letter to the United States Treasury Department for the signature of the President of the Association.

Issue Editor—Harry J. Keaton

Law and Medicine

By HOMER C. PHEASANT, M.D.*

Our professions, yours and mine, have their origins in life itself. With life we have society, and all the problems that entails, both from the standpoint of social regulations and the afflictions to which man is heir. Simultaneously, there arose the chief or leader with his laws, sanctions or taboos, and the medicine man or doctor with his primitive lore of healing. History further indicates that those individuals concerned with the maintenance and interpretation of law and order, as well as those concerned with the healing art, were oft identified with religion and teaching, with the initial boundary separating these fields not always being distinct, one merging with the other and one often combining with the other. As history further points out, there has always been a close and necessary relationship between attorneys and physicians. As early as the 13th Century, the Medical School of the University of Bologna enjoyed the protection of a powerful law faculty. It was further stated that there was a close interrelation between the law faculty and the Medical School. For example, in a case of homicide a doctor was often called in for an autopsy in an effort to turn up possible clues by dissection. This probably was the earliest use of a coroner.

There is, of course, an obvious close tie between medicine and law, in the field of forensic medicine. This field, however, is highly specialized and so restricted that neither many attorneys nor physicians have much knowledge of nor exposure to forensic medicine.

The average doctor stands somewhat in awe of attorneys. Theirs is a strange ritualistic world of black robes, imposing walnut furniture, with the doctor often feeling as much out of place as any of you probably feel in a physician's examining room. Both physicians and attorneys have a language of their own almost equally incomprehensible to the other. Take the doctor or the lawyer out of his special environment, and he becomes just an ordinary human being who plays a variable game of bridge, blames his wife when he overbids,

*Based upon an address given by Dr. Pheasant to the University of Southern California Law School Alumni Association, at the University Club, April 28, 1959.

Dr. Pheasant received the B.S. degree from Loyola University in 1932, an A.B. from the University of California, Berkeley in 1933, his M.D. from the University of California School of Medicine, San Francisco in 1937, and the degree of Doctor of Medical Science in Orthopedic Surgery at Columbia University, New York in 1941.

Dr. Pheasant, a Los Angeles surgeon, limits his practice to orthopedic surgery. He has been councilor of the Los Angeles County Medical Association for the Metropolitan District, 1953 to present; chairman of the Combined Litigation Committee of the Bar and Medical Associations 1956 through 1958; and chairman of the Insurance Study Committee of the Medical Association, 1956, 1957 and 1959.

fibs about his golf handicap, and likes to go fishing with his kids. We have a great deal in common, and I think that one of our great failures in the past in terms of improving our group relationship one to the other, has been in matters of communication. This has created misunderstanding of mutual problems and needs.

LEGAL-MEDICAL LITIGATION COMMITTEE

For the past seven years there has been a committee made up of members of both the Medical and Bar Associations called the Combined Litigation Committee of the Bar and Medical Associations. It is the feeling of those of us who have been members of this Committee that it has done appreciable to narrow what was formerly a widening gap of misunderstanding between doctors and attorneys. It has accomplished this in many ways.

For at least these years, it has made available to the Superior Court of this County a roster of learned physicians in all fields of medicine that would be available to act as Friends of the Court.

Notwithstanding the recent Saturday Evening Post articles on malpractice, and the outcries raised by one of your esteemed members, Melvin Belli, this County has been foremost among all Medical Societies in this country in providing, for the use of plaintiff attorneys, a panel of physicians who would advise and would be prepared to testify in professional liability actions. I must grant that this came into being because we were somewhat fearful that legislation would be enacted providing for the introduction of text books as evidence in professional liability actions. I believe much good has come from this plan which, with refinements and improved mechanics of operation, is now a State sponsored program for all component societies in this State, and has now received national recognition.

How does this program operate? The attorney who has presented to him a potential professional liability action must necessarily have a medical witness. Even before this fact is assured, I would think it wise for him to have an unbiased medical expert examine all the medical information, including the records of the defendant physician, and/or hospital, (X-rays of course), and when feasible, perform an examination of the plaintiff and perhaps engage in some necessary research into medical literature. With this information, the expert can then prepare a report in which he identifies a standard of care as either conforming to or as not conforming to that which is usual and customary in a community. The doctors on this

panel are prepared to testify and support the conclusions that they express. They *are* plaintiff's witnesses. Don't think for one moment that you cannot get a plaintiff witness or expert in this area.

ABUSE OF THIS SYSTEM

There have been criticisms of this program. When these are analyzed, it would appear that they arise from individuals or offices that are inclined to abuse this panel and this program. How can this be? I will cite an example. An attorney, who of course has known of an approaching trial date for the past 18 months, calls up the secretary of the Bar, Mr. Johnson, who is charged with the responsibility of selecting names from the panel in rotation of use, and expresses great urgency. The standard routine is to address a letter to the attorney listing the names of two doctors from the Panel, and carbons of these letters then go to the doctors who are named. In the past it has happened that these names were given to the attorney over the telephone. I am certain that on occasion even before the letter of confirmation was typed, the attorney making this inquiry did call the named physicians and over the phone tried to size up the situation as to whether or not they would be favorable to his client. Often on the basis of this "trial by telephone" the attorney decided that neither of the two proferred names would be satisfactory, and so with some flimsy pretext or other, he went back to the Bar Association requested two more names. All this, of course was done with unfashionable urgency. I believe this can properly be called an abuse of such a system.

Names are no longer available by telephone. The doctors on the Panel have been carefully instructed to report any inquiring telephone call from an attorney who is simply shopping for information, listing the name of the attorney and, if possible, the plaintiff in the action so that a record can be made of this call and forwarded to both the Bar and Medical Associations for their files. And, of course, if an actual appointment is made with the physician, a report is completed and forwarded listing the name of the plaintiff and his attorney.

If the report of examination and the medical conclusions expressed by the physician consultant are not felt to be sufficiently favorable by the employing attorney, he can obtain new names of consultants from the Bar Association. However, in order to do this, the plaintiff attorney must in writing free the prior physician from any restraint of testifying as a defense witness. With the

records in the files of the Bar and Medical Associations, it can be easily ascertained who has seen and examined any particular plaintiff in a professional liability action. The physician naturally looks to the plaintiff for reimbursement, although we understand that some of the necessary expenses of trial preparation can be advanced by the plaintiff attorney.

So far, in Southern California, the described system has made very little difference in the increasing incidence of professional liability suits, but it does have its humorous side. Not too long ago the President of our Medical Association, by virtue of a long antecedent commitment, testified as a plaintiff's witness in a professional liability action and several weeks later while testifying as a defense witness in a similar action, was challenged by the plaintiff's attorney to explain why he only appeared as a defense witness. His rejoiner that the facts would speak for themselves in that just three weeks previously he had testified as the plaintiff's expert in a malpractice action probably greatly raised his stature in the eyes of the jury that was hearing this case.

Formerly it was the rare citizen or doctor who had "his day in court." The contentiousness of modern life has not been without its rewards to you, and indirectly to those physicians who have specialty skills and legal experience. However, for every physician who is versed in court decorum and procedure, there must be several hundred who would rather go to their own funeral than testify in Court. I believe I am justified in saying that there is still a fairly sizable segment of your profession who, while filing and trying personal injury cases, do so with only meager qualifications. This is somewhat akin to a general practitioner trying to set a complex fracture or diagnose and treat a difficult and rather occult medical problem.

DOCTOR-LAWYER CODE

At just about this time last year the Combined Committees published a Code of Interprofessional Conduct. Copies of this Code are available from your Bar Association and have already been sent individually to each physician who is a member of the Los Angeles County Medical Association. It was published in your Bulletin, I believe in either the first or second issue of May 1958, in its complete text. It has resolved many issues. Those who have awareness of this work of your Combined Committees may refer to the Code in what is interpreted to be a doctor-lawyer relationship problem only to find that no real problem exists, the issue merely being a mat-

ter of misunderstanding and lack of communication which can be quickly resolved. On the other hand, when things become a bit out of hand, we can use this Code as a reference and almost as a text book of conduct, applying it on one hand to the physician and perhaps on the other to the attorney. Again, I would like to point out that although this plan of interprofessional code did not originate in Los Angeles County, its general acceptance here brought it to State attention where it was accepted on a State level by both the California state Medical and Bar Associations, but very recently was somewhat re-phrased and published in the Journal of the American Medical Association.

A final word on malpractice. The doctors wish that medicine were more of an exact science, but it still is not. It is largely a matter of judgment and skill. Physicians can be no warrantors of results. They are human, and it seems to us that ofttimes the public and even the Courts feel that we should be infallible. Even you can err. I read with interest that an attorney is liable to his client in damages for failure to exercise ordinary care and skill. You should want no more and no less from your physicians than ordinary care and skill and judgment.

"Lawyers of Los Angeles"

By HOMER D. CROTTY*

In 1956, the Trustees of the Los Angeles Bar Association determined that a history of the Association should be written. Scraps of the story in short articles, in the memoirs and diaries of lawyers and judges, of course existed. But not until W. W. Robinson put together the extraordinarily interesting tale of legal Los Angeles has anything like it, in completeness or interest, been undertaken.

W. W. Robinson, a recognized historian of Southern California, was selected to write the history of the Los Angeles Bar. He is best known for his authoritative work, *Land in California.* Among his other books are *Panorama—a Picture History of California* and *Los Angeles from the Days of the Pueblo.* He has also written numerous articles and pamphlets on Southern California historical subjects.

Robinson worked with the Publication Committee[1] of the Association for over three years, and the book, with numerous illustrations, is now on the press. Publication is expected in December of this year.

The subtitle of the book is "A History of the Los Angeles Bar Association and of the Bar of Los Angeles County." The early lawyers and their cases are most interestingly described. Those were the days when lawyers carried bowie knives and pistols into court. The faltering early steps in organizing the Association in the 1870's and 1880's are noted. It was not until the 1900's that the Association became the vigorous body it is today.

The part the bar played in throwing the Southern Pacific out of politics, the fascinating story of the *Times* dynamiting, the guilt of the McNamaras, the indictment of Clarence Darrow for bribery are all told.

Each courthouse in turn was thought adequate for the foreseeable future. How wrong all of these estimates turned out to be!

Every lawyer in the county will be delighted to have this book. He will be proud of the Los Angeles Bar Association for its initiative, its vigor and its accomplishments.

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*Mr. Crotty is a member of the Los Angeles and American Bar Associations, the Council of the American Law Institute and a Vice President of the American Judicature Society.

[1]Warren H. Christopher, A. Stevens Halsted, Jr., Robert Kingsley, Edward D. Lyman, William A. C. Roethke, and Homer D. Crotty, Chairman.

THE PUBLIC IMAGE OF THE LAWYER

(Continued from Page 329)

4. Do you believe that many lawyers are more interested in their fee than their client's welfare?

Yes: 55 No: 33 No opinion: 14

An affirmative answer to this question is obviously a charge of violation of our stated ethics and creed; the welfare of the client must in any case be of paramount interest over fees. The fact that the question may lead toward the affirmative answer appears an insufficient explanation for the 1½ to 1 challenge to the Bar, based upon responses to other questions similarly framed.

5. Do you feel that the shoe often fits when a lawyer is referred to as a "shyster," "ambulance chaser," or "mouthpiece"?

Yes: 44 No: 44 No opinion: 14

One answer stated prophetically "½" instead of Yes or No. The fact that there was an even split on this question should provide no solace to lawyers in view of the qualifying word "often." Once again the author has sufficient confidence in the results, based upon the overall pattern and the way the questionnaires came in, to feel that the "often" was not completely overlooked. With better public education as to the ideals and canons of ethics of the profession, it is contended the answers would have been more dominantly negative.

6. Do you feel that lawyers who defend criminals commonly distort the truth and produce false evidence to help their clients?

Yes: 56 No: 34 No opinion: 12

The question is strongly worded; it would be hard to miss the qualification "commonly." One person answered "Yes" to "distort the truth" but "No" to "produce false evidence." But 60 per cent chose not to qualify their "Yes" answers. The answers suggest that counsel in criminal cases is still suspect in the public eye. It may be that the wording of the question implies guilt before conviction; it would have been better had it been worded "persons charged with crime" rather than "criminals." Neither the writer nor persons reviewing the questions noted the implication. One may therefore suspect that non-lawyers responding were not substantially influenced by it. At any rate, the answers would seem to indicate that more public education is necessary in connection with the role of counsel in criminal cases.

7. Do you feel that a court trial (either civil or criminal) as conducted by trial attorneys is generally more a game of skill and craftiness than a sincere search for the truth?

Yes: 70 No: 21 No opinion: 11

The question would appear clear enough as qualified by "generally" and the ratio of 3½ to 1 ample evidence of the fact that the sporting theory of justice is still with us. Despite the advances in the fields of pre-trial and discovery procedure, and the pronouncements of the courts that the sporting theory should be abandoned, it is submitted that public education will be more effective after the fact than before.

8. Do you feel that attorneys, on the whole, are too pompous or self-important?

Yes: 34 No: 58 No opinion: 10

It was evident from the earliest returns that the Bar would weather this occasional charge. Nevertheless 34 per cent of this sample apparently feel that attorneys stand on their own dignity a little too heavily. One would assume that more contact with attorneys would dispel any such impression, but the ratio was the same for those who stated they had dealt with attorneys as for those who had had no such dealings.

9. Do you feel that attorneys tend to be too hide-bound by tradition or precedent and therefore too inflexible and impractical in their thinking?

Yes: 21 No: 60 No opinion: 21

The Bar here survived what was felt to be a common charge of lack of a practical approach through adherence to the past. Apparently there is little need to point out that the lawyer's familiarity with the past tends to make his attitude more practical, if anything.

10. Do you feel that attorneys' fees are generally too high for the services rendered?

Yes: 60 No: 26 No opinion: 16

This response hurts, especially if the suspicion is correct that the persons responding tend to be the more literate, hence the more intelligent, individuals in the sample. The results would tend to bear out what public-relations-minded attorneys have long contended, namely, that there is a great need for more explanation of what the attorney is doing and thinking as he goes along, before

that statement for fees goes out. Unfortunately, the ratio was no more favorable for those persons who have dealt with attorneys than those who have not. It was actually a little worse.

11. Do you feel that the work of attorneys, as a group, is instrumental in maintaining a free society and promoting good government?

    Yes: 80 No: 17 No opinion: 5

This response suggests that the public appreciates the role lawyers serve in preserving our basic liberties and in the three branches of government. As one individual added, "Most of the men of government were and are lawyers."

12. Do you know an attorney as a personal friend or neighbor (or have you known one in this manner)?

    Yes: 77 No. 25

13. Have you ever retained the services of an attorney or been represented by an attorney personally?

    Yes: 69 No: 33

Either most persons having telephones have dealt with attorneys or more such persons chose to respond. The question was included,

as was the previous one, to determine if there were any significant differences in opinion between the two groups. There was no case in which the trend of the responses was different, and in most cases the ratio was practically identical. Both groups started to break with engineers over lawyers. Both felt lawyers were more interested in winning than finding the truth by better than 3 to 1. Clients were only a little kinder about fees over client's welfare and criminal defense than non-clients, but were a little harsher in regarding a trial as a game of skill and attorneys fees as too high. Perhaps the less satisfactory experiences prompted more responses (the squeaky wheel getting the grease) and perhaps the sample is too small to detect any difference in attitudes as a result of contact. At any rate, all one can conclude is that *better* contact, more explanation, a better foot forward rather than more contact with attorneys is the answer to better public relations.

14. Do you feel that a lawyer's advice tends to be too impractical or theoretical to solve the problem or accomplish what you want to do?

Yes: 15 No: 68 No opinion: 19

Ex-clients answered "Yes" 13 and "No" 49, or 4 to 1 against this complaint.

15. Do you feel that the client often ends up "educating" the attorney more than the attorney educates the client, in arriving at a practical solution to the client's problem?

Yes: 19 No: 62 No opinion: 21

Once again the attorney emerges as practical and helpful in the vast majority of responses, though this complaint may sometimes be entertained by a knowledgeable client requiring representation in a business or specialized field.

16. Do you feel that attorneys tend to be too superficial or careless in learning the facts and background of the client's problem?

Yes: 26 No: 58 No opinion: 18

Apparently the clients who feel frustrated when the attorney does not take as much time to grill them for the "whole story" are outnumbered by those who find attorneys thorough and interested in the details. Clearly not a major complaint.

17. Do you believe that attorneys often work in collusion with

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the other side or are too cooperative for their clients?

Yes: 33 No: 53 No opinion: 16

Here again there is no major complaint, although all attorneys have heard charges that the lawyer "sold out" to the other side, "gave in" to the judge, or sold the client "down the river," from the client's vantage point. The fact that 26 ex-clients answered "Yes" to this question is further evidence of the need to let the client in on what is going on within reasonable limitations of time and the client's level of understanding.

18. Do you feel that it is better to keep attorneys out of the picture as long as possible (until court action is absolutely necessary)?

Yes: 45 No: 50 No opinion: 7

The answers here are not encouraging, both from the standpoint of public understanding of the role of the Bar and the basic attitude toward attorneys. The case for preventive law and legal health check-ups has not yet been made, from all appearances.[9]

Though the poll may be limited in value, due to its limited size and undoubtedly some intrinsic defects, the author trusts that it has some merit and would be happy if it provided additional stimulation to those members of the Bar who chafe at the poor communication and understanding between the public and the Bar, and who are dedicated to improving the same. In a democracy it is neither safe nor profitable to fare poorly in the court of public

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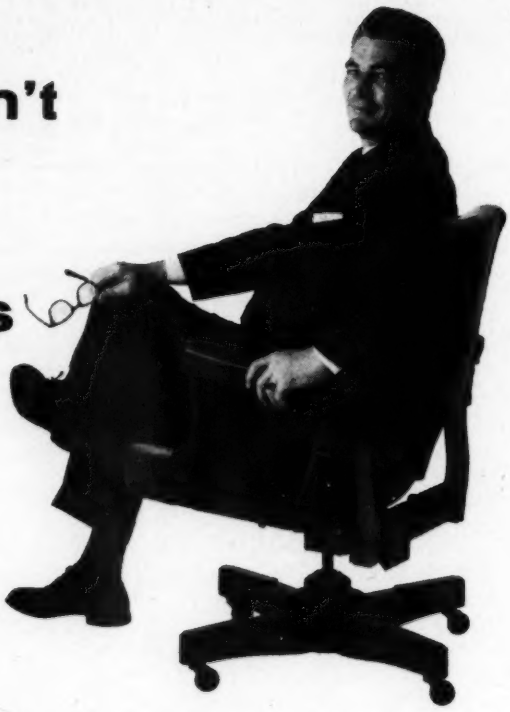
[9] *See Preventive Law and Public Relations: Improving the Legal Health of America,* by Louis M. Brown, A.B.A. Jrl. Vol. 39, p. 556 (July 1953).

He doesn't have to guess



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opinion. Certainly it is not necessary for attorneys to do so, for two reasons: First, they are purportedly and actually the finest persuaders and spokesmen of the people, and rank among the most learned. Secondly, their history is as proud as the history of western civilization and their function is of the essence of democracy, epitomizing the hope of the world on the brink of a technological armageddon—the peaceful preservation of basic human rights and the just settlement of disputes between individuals and governments.

Necessary and sufficient means for bringing about proper understanding and communication between the Bar and the public have been set forth by the Public Relations committees of the national, state, and local bar associations. The tools — public relations manuals, speech outlines, pamphlets, films, committees et al—are all readily available.[10] What remains in order to change the results of any future polls of public opinion toward attorneys is for the individual attorney to assume a combination role of public relations counsel and public-private instructor on behalf of the profession.

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[10]*See Public Relations and the Bar: The Program of the American Bar Association*, supra; *Summary of Activities* of the A.B.A., 1957; Report of the Public Relations Committee to the Board of Governors, State Bar of California, Vol. 33, p. 460 (July-August 1958).

TAX REMINDER

JUDICIAL TRENDS IN DEPRECIATION

By ROBERT H. WYSHAK*

Recent decisions supporting the Treasury Regulations promulgated under the 1954 Code may shatter the concepts of both laymen and experts on crucial factors in computing depreciation.

The cases primarily involve automobiles.[1] With the advent of the accelerated depreciation methods allowable under the 1954 Code and the attendant publicity, sales of expensive cars and business equipment have held at a high level, the theory being that the Government would bear the major portion of the expense of ownership via the large depreciation deduction. This premise has proven fallacious because of the judicial interpretations given the concepts of "useful life" and "salvage value."

Generally, many in the past have thought, as certified public accountants testified in these cases, that "useful life" meant the physical, economic or functional life of the property subject to the depreciation allowance, and that the term "salvage value" meant the value remaining in the property at the end of its physical, economic or functional life—its residual or scrap value.

These cases hold that "useful life" means the life of the asset in the hands or business of the taxpayer and that "salvage value" means the value at the end of the useful life in the hands of the taxpayer. In addition, such salvage value must be initially considered in determining the depreciation deduction. One case[2] holds that salvage value may be later changed because a "real" salvage value is later determined. This results in a change in the depreciation deduction in the year of disposition of the asset.

These interpretations result in substantially smaller deductions than many taxpayers thought permissible under the accelerated depreciation provision.

There is presently a conflict in the circuit courts of appeal as to whether these interpretations should be retroactively applied to periods prior to the 1954 Code and Regulations, with the *Evans* Ninth Circuit decision favoring the taxpayer's viewpoint that useful life meant economic life.

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*Asst. U.S. Atty., So. Dist. of Calif., Asst. Chief, Tax Division. The views expressed herein are the writer's and do not necessarily represent the opinions of the Department of Justice or Internal Revenue Service.

[1]*Evans v. United States*, 264 F. 2d 502 (9th Cir. 1959); *United States v. Massey Motors, Inc.*, 264 F. 2d 552 (5th Cir. 1959), Cert. applied for 6/24/59; *Hertz Corp. v. United States*, ... F. 2d ..... (3d Cir. 7/6/59), Cert. applied for 8/6/59.

[2]*Cohn v. United States*, 259 F. 2d 371 (6th Cir. 1958).

Brothers-In-Law

By George Harnagel, Jr.

George Harnagel, Jr.

If asked to identify Charles Doe, many law students of this generation would probably hazard the guess that he was a brother of John. As every reader of this department surely knows, they would be quite wrong.

Charles Doe was appointed to the Supreme Judicial Court of **New Hampshire** at the age of 29, and this month the New Hampshire State Bar is observing the centennial of that appointment. He served as Associate Justice for 15 years, was off the bench for two years as the result of a political upheaval, and then returned as Chief Justice of a newly established Supreme Court when the political pendulum swung abruptly the other way.

The opinions that flowed from his pen had a powerful influence on the development of the common law in this country. While his contributions to the substantive side of the law were many, in the field of adjective law they were unique.

Operating from the premise that substantive common law rights exist apart from the particular forms of action invoked to enforce them, and activated by a deep conviction that justice should be administered with a minimum of expense and delay, he reformed the common law pleading and practice of his state by judicial decision without waiting, as other courts did, for the legislature to act.

He renovated the law of Evidence, and if you will look in the first volume of Dean John H. Wigmore's monumental treatise, you will find that it is dedicated to a professor and to a judge. Charles Doe is the judge.

Dean Roscoe Pound has called him one of the ten great judges in American history.

* * *

"I was made in private life a trustee of the Rockefeller Foundation. Then our old friend Ray Lyman Wilbur came on the Board with his collegiate ideas. He persuaded us to adopt a by-law re-

tiring every trustee at sixty-five. At sixty-five I was retired for senility. And the next thing that I knew I was appointed Chief Justice of the United States. Don't you think that was funny?"—Charles Evans Hughes to John Lord O'Brian, as related by the latter at the Arden House Conference on Continuing Legal Education, December 1958.

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